

VIA HAND DELIVERY

September 21, 1999

Magalie Roman Salas, Secretary
Federal Communications Commission
445 - 12th Street, S.W.
TW-A325
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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Re: Ex Parte Presentation in CC Docket Nos. 98-141, 98-147

Dear Ms. Salas:

Today the undersigned, accompanied by Ernest B. Kelly, III, and Stephen D. Trotman, President and Vice President - Industry Relations, respectively, of the Telecommunications Resellers Association ("TRA"), met with Commissioner Susan Ness and Linda Kinney, Legal Advisor to the Commissioner for Common Carrier matters. In that meeting, TRA urged the Commission to require local exchange carriers to make available at wholesale rates for resale advanced telecommunications services and to decline to allow the use of separate subsidiaries as a mechanism by which such carriers might avoid this obligation. Materials distributed at that meeting are attached hereto.

Respectfully submitted,



Charles C. Hunter
General Counsel
Telecommunications Resellers Association

Attachment

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**Telecommunications
Resellers
Association**

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Resale of Advanced Telecommunications Services at Wholesale Rates

The Law:

- Incumbent local exchange carriers have a duty under Section 251(c)(4) to offer for resale at wholesale rates any telecommunications services they provide at retail to subscribers who are not telecommunications carriers.
- The Commission has held that advanced telecommunications services are "telecommunications services."
- The Commission has tentatively (and correctly) concluded that advanced telecommunications services are subject to the Section 251(c)(4) resale obligations without regard to their classification as exchange or exchange access because they are offered predominantly to subscribers who are not telecommunications carriers.
- Advanced telecommunications services are provided at "retail" to residential users as single line offerings and to business users as multi-line offerings.
- Advanced telecommunications services are provided at "retail" to Internet service providers as bulk offerings.
 - Under the Telecommunications Act, services are offered at either "wholesale" or "retail." Wholesale requires resale without substantial alteration in either form or content. Retail contemplates consumption either by an end user or as an input to another product or service.
 - Internet service providers do not resell advanced telecommunications services; if they did they would be carriers subject to certification and other federal and state regulatory requirements. Internet service providers use advanced telecommunications services as inputs to their Internet-based services offerings.

- The Commission has determined in the context of volume and term customer specific arrangements that bulk offerings must be made available to requesting carriers for resale at wholesale rates, expressly rejecting the contention that Section 251(c)(4) does not apply to "discounted rates."
- It is for the Commission or individual state commissions, not incumbent local exchange carriers, to determine wholesale discounts.
- Avoided costs must be determined on the basis of an avoided cost study.

Public Policy:

- Requiring incumbent local exchange carriers to make advanced telecommunications services available for resale at wholesale rates will:
 - Help drive a mass market for advanced telecommunications services.
 - Provide a vehicle for small Internet service providers to compete against the America Online and other large Internet service providers.
 - Ensure that segments of the market are not walled off exclusively for incumbent local exchange carriers
 - Provide non-facilities-based local providers a fair opportunity to compete.



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**CONDITIONS PROPOSED BY
SBC CORPORATION INC. AND AMERITECH CORPORATION
TO MITIGATE THE ANTI-COMPETITIVE IMPACTS
OF THEIR PROPOSED MERGER**

A SMALL CARRIER ASSESSMENT

Conditions

Assessment

Provision of Advanced Services
Through a "Separate" Subsidiary

Contrary to law and the public interest;
Accomplishes indirectly that which Section 10(d)
prohibits the Commission from doing
directly – *i.e.*, prematurely relieving
incumbent LECs of their Section 251(c)
responsibilities;

Ineffective: the minimal required separation will
not safeguard against anti-
competitive abuses;

Unnecessary: market forces are driving the
deployment of advanced services
capability.

Additional Resale Discounts,
Additional Discounts on UNE Loops,
Availability of UNE Platform

Mitigative impact diminished significantly by
excessive restrictions on number of lines,
service applicability, duration, service
offerings, and bundling.

Operations Support Services:
Assistance for Small Carriers

Theoretically positive, but will require a complete
change in SBC/Ameritech's mind-set which
is unlikely to occur;

Waiver of Charges

Positive impact limited by restriction to electronic
order submission;

Enhancements and
Additional Interfaces

Concerns: Lengthy Deployment schedule and
potentially burdensome cost
assessments

Agreements:

Out-of-Region/In-Region	Mitigative impact undermined by exclusion of arbitrated agreements, resale arrangements and pricing elements, imposition of duration limits, and required acceptance of terms and conditions determined by SBC/Ameritech to be part of a "corresponding compromise"
Regional	A generally positive development, but impact diminished by lack of pricing uniformity
Alternative Dispute Resolution	A positive development
Collocation Compliance Plan ARMIS Reporting	Merely restates existing requirements
Federal Performance Parity Plan Availability of Line Sharing Availability of Shared Transport Unbundled Access to Current Set of Network Elements Additional Service Quality Reporting MDU Cable Access	Could be unilaterally imposed by the Commission or could be imposed on the basis of existing records in ongoing Commission proceedings
National-Local Strategy	Market driven
Deployment of Advanced Services in Low Income Areas Long Distance Monthly Fees Enhanced Lifeline Plans	No competitive impact